

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

JOHN McCARTHY,

Plaintiff,

- against -

BOY SCOUTS OF AMERICA, GREATER NEW
YORK COUNCILS, BROOKLYN COUNCIL
and JOHN B. LOWELL,

Defendants.

Index No:

SUMMONS

To the above named defendants:

YOU ARE HEREBY SUMMONED to answer in this action and to serve a copy of an answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff(s)' attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates Kings County as the place of trial.

The basis of the venue is based on the place of business of one or more of the defendants.

Dated: October 29, 2019

OKUN, ODDO & BABAT, P.C.

By: 

David M. Oddo, Esq.
Attorneys for Plaintiff
8 West 38th Street, Suite 1002
New York, New York 10018
(212) 642-0950
File: 12069

Defendants' addresses:

BOY SCOUTS OF AMERICA: 1325 W. Walnut Hill Lane, #5406, Irving, TX 75038 – Via
Secretary of the State

GREATER NEW YORK COUNCILS: 475 Riverdale Drive, Suite 600, New York, NY 10115

BROOKLYN COUNCIL: 475 Riverdale Drive, Suite 600, New York, NY 10115

JOHN B. LOWELL: 158 Coyne Place, Belford, NJ 07718

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

JOHN McCARTHY,

Plaintiff,

Index No:

- against -

VERIFIED COMPLAINTBOY SCOUTS OF AMERICA, GREATER NEW
YORK COUNCILS, BROOKLYN COUNCIL
and JOHN B. LOWELL,

Defendants.

Plaintiff, JOHN McCARTHY, by his attorneys, OKUN, ODDO & BABAT, P.C., alleges on personal knowledge as to himself and on information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. This is an action to recover damages arising from a sexual assault by defendant, JOHN B. LOWELL (hereinafter LOWELL), who was employed by the defendant, BOY SCOUTS OF AMERICA. LOWELL sexually molested the plaintiff, JOHN McCARTHY, over several years when the plaintiff was 13 years old through the time he turned 17 years old.

2. On or before 1970, LOWELL was assigned and/or appointed by defendants, BOY SCOUTS OF AMERICA, GREATER NEW YORK COUNCILS, and/or BROOKLYN COUNCIL, to serve as a Troop Leader of Troop 134. In said capacity, LOWELL sexually molested the plaintiff over four years in different locations across the State of New York.

3. The defendants, BOY SCOUTS OF AMERICA, GREATER NEW YORK COUNCILS, and BROOKLYN COUNCIL, employed, supervised and/or directed LOWELL, failed to take steps to prevent him from molesting children in his care. Instead, the defendants left a sexual predator to counsel and educate school-age children, and failed to take steps to protect young victims on whom LOWELL preyed.

4. Plaintiff now seeks damages from the defendants who are legally responsible for LOWELL's actions and who failed to properly supervise and/or direct LOWELL.

THE PARTIES

5. Plaintiff, JOHN McCARTHY, is an individual who resides in the State of New Jersey. At the time of the events complained of, he was a minor residing in the State of New York and the County of Kings.

6. The defendant, BOY SCOUTS OF AMERICA, is a not for profit domestic corporation authorized to do business in New York, with its principal place of business in the State of Texas.

7. The defendant, BOY SCOUTS OF AMERICA, authorized local councils and local organizations, including the defendants, GREATER NEW YORK COUNCILS, and BROOKLYN COUNCIL, to charter, sponsor and operate Boy Scout Troops, throughout New York, including Plaintiff's troop, Troop 134.

8. The defendant, BOY SCOUTS OF AMERICA, retained and/or exercised the authority to determine the leaders, counselors, or volunteers of the individual troops.

9. The defendant, JOHN B. LOWELL, is an individual who resides in the State of New Jersey. At the time of the events complained of, he was residing in the State of New York and the County of Kings.

10. The defendant, JOHN B. LOWELL, was the Troop Leader of plaintiff's troop, Troop 134, and was also a Troop Leader, volunteer and/or a Ranger at Alpine Scout Camp, one of the locations where plaintiff was sexually abused.

FACTUAL BACKGROUND

11. Throughout the relevant time period, one or more of the defendants' agents, servants, and or employees were responsible for the hiring, retention, direction and supervision of

LOWELL, in his role as Troop Leader, mentor and counselor for young boys.

12. Defendant, BOY SCOUTS OF AMERICA, at all times relevant herein, operated, supervised, counseled, and/or directed Troop 134 in Kings County, New York. Beginning at some point prior to 1970, the defendants assigned LOWELL as a Troop Leader and educator to Troop 134.

13. LOWELL's duties and responsibilities included educating, supervising, interacting with, mentoring and counseling boy scouts, all of who were minor boys.

14. LOWELL developed an inappropriate relationship with the plaintiff, inducing him as a young child, to look up to him, and to place absolute trust and confidence in him. LOWELL then abused that trust and confidence by molesting and sexually abusing the plaintiff over a four year period.

15. Starting in 1971 through 1974, LOWELL molested the plaintiff, starting when he was just a 12 year old minor. Defendant molested and sexually abused the plaintiff. Lowell often who ply the plaintiff with alcohol and then fondled the plaintiff's genitals, made the plaintiff touch LOWELL's genitals, slept naked in bed with the plaintiff, rubbed his genitals against the plaintiff's buttocks. The molestation would occur in the defendant's vehicle, in different locations in Brooklyn, and mostly at Camp Alpine in New Jersey.

16. LOWELL was acting within the scope of his employment as a Troop Leader, counselor and mentor in soliciting the plaintiff's trust, and in meeting with the plaintiff alone outside the supervision of other adults. LOWELL abused the plaintiff's trust and used such meeting as an opportunity to molest and sexual abuse the plaintiff.

17. LOWELL was acting within the scope of his employment as a Troop Leader, educator and counselor when he molested the plaintiff.

18. The defendants hired and/or appointed LOWELL as a Troop Leader, mentor and counselor for boy scouts, who were minor boys. By so hiring and/or appointing him, the defendants made certain representations about LOWELL's character, specifically that he was a role model for minor boys and/or an individual to whom minor boys could be safely entrusted. At the time they hired and/or appointed LOWELL, and made these representations about his character, the defendants knew, or should have known, of his propensity to molest boys and should not have placed him in a position of trust and confidence with, access to and authority over young boys.

19. The defendants retained, supervised, managed and/or directed LOWELL in his role as a Troop Leader, mentor and counselor for minor boys. By so retaining him, the defendants made certain representations about LOWELL's character, specifically that he was a role model for minor boys and/or an individual to whom minor boys could be safely entrusted. During the time that they retained LOWELL as the Troop Leader, and made these representations about his character, the defendants knew, or should have known, of his propensity to molest boys, and, in particular, of his inappropriate relationship with the plaintiff. The defendants failed to direct and/or supervise LOWELL in a manner to prevent, or detect his sexual abuse of minor boys, including the plaintiff.

20. As a result of LOWELL's sexual abuse, the plaintiff suffered physical, psychological and emotional injury. The plaintiff experienced feelings of guilt, loss of self-respect, shame, embarrassment, sadness, anger, alcoholism, depression, anxiety, and confusion resulting from LOWELL's abuse. The plaintiff developed lifelong problems with authority, with establishing, developing and maintaining relationships, with sex, and with being touched as a result of LOWELL's sexual abuse. The plaintiff suffered from nightmares, panic attacks and flashbacks.

CAUSES OF ACTION**FIRST CAUSE OF ACTION**

21. Plaintiff repeats and realleges by reference all preceding paragraphs of this Complaint into this paragraph.

22. From 1971 through 1974, LOWELL molested and sexually abused the plaintiff as described above. Such bodily contact was offensive and was without consent, because the plaintiff was a minor and was incapable of consenting to these acts.

23. At the time LOWELL molested the plaintiff, he was employed and/or appointed by the defendants as the plaintiff's Troop Leader. It was part of LOWELL's job, as role model, to gain the plaintiff's trust. LOWELL used his position of authority, and the representations made by the defendants about his character that accompanied that position to gain the plaintiff's trust and confidence to create opportunities to be alone with and molest the plaintiff.

24. The defendants are liable for LOWELL's molestation and sexual abuse, including psychological and emotional injury as described above.

25. By reason of the foregoing, the defendants are liable to the plaintiff for battery in an amount which exceeds the jurisdictional limits of all lower Courts which may have jurisdiction of this matter.

SECOND CAUSE OF ACTION: ASSAULT

26. Plaintiff repeats and realleges by reference all preceding paragraphs of this Complaint into this paragraph.

27. From 1971 through 1974, LOWELL molested and sexually abused the plaintiff as described above. Such bodily contact placed the plaintiff in imminent apprehension of harmful contact, including apprehension of further sexual contact.

28. At the time LOWELL molested the plaintiff, he was employed and/or appointed by the defendants as the plaintiff's Troop Leader, mentor and counselor. It was part of LOWELL's job, as a role model, counselor and Troop Leader, to gain the plaintiff's trust. LOWELL used his position of authority, and the representations made by the defendants about his character that accompanied that position to gain the plaintiff's trust and confidence to create opportunities to be alone with and molest the plaintiff.

29. The defendants are liable for LOWELL's conduct under the doctrine of *respondeat superior*.

30. The defendants are liable for LOWELL's offensive bodily contact, including psychological and emotional injury as described above.

31. By reason of the foregoing, the defendants are liable to the plaintiff for assault in an amount which exceeds the jurisdictional limits of all lower Courts which may have jurisdiction of this matter.

THIRD CAUSE OF ACTION: NEGLIGENT HIRING

32. Plaintiff repeats and realleges by reference all preceding paragraphs of this Complaint into this paragraph.

33. At all times relevant herein, LOWELL was hired as a Troop Leader, mentor and counselor by defendants.

34. The positions for which LOWELL was hired required him to work closely with, mentor and counsel young boys.

35. The defendants were negligent in hiring LOWELL because they knew, or if they did not know, they should have known, of his propensity to develop inappropriate relationships with boys in his charge and to engage in sexual behavior and lewd and lascivious conduct with such boys.

36. The defendants intentionally deceived the students and parents of the Troop 134 Community and facilitated and enabled LOWELL to continue to sexually molest children.

37. The defendants demonstrated a reckless disregard for the safety and well-being of minor children, by allowing LOWELL to be employed as a Troop Leader with a known pattern of deviant behavior.

38. LOWELL would not and could not have been in a position to sexually abuse the plaintiff had he not been hired by the defendants to be the Troop Leader, and mentor and counsel boys in the school, including the plaintiff.

39. The plaintiff suffered injury as a result of LOWELL's sexual molestation, including psychological and emotional injury as described above.

40. By reason of the foregoing, the defendants are liable to the plaintiff for their negligent hiring of LOWELL in an amount which exceeds the jurisdictional limits of all lower Courts which may have jurisdiction of this matter.

**FOURTH CAUSE OF ACTION: NEGLIGENT RETENTION,
SUPERVISION AND/OR DIRECTION**

41. Plaintiff repeats and realleges by reference all preceding paragraphs of this Complaint into this paragraph.

42. At all times while LOWELL was employed and/or appointed by the defendants, he was supervised by, under the direction of, and/or answerable to, the defendants and/or their agents and employees.

43. The defendants were negligent in their direction and/or supervision of LOWELL in that they knew, or if they did not know, they should have known, of his propensity to develop inappropriate relationships with boys under his charge and to engage in sexual behavior and lewd and lascivious conduct with such boys, yet they failed to take steps to prevent such conduct from occurring.

44. The defendants were negligent in their retention of LOWELL in that they knew, or had reason to know of his propensity to develop inappropriate relationships with boys under his charge and to engage in sexual behavior and lewd and lascivious conduct with such boys, yet they retained him in his position as Troop Leader and counselor to such boys and thus left him in a position to continue such behavior.

45. The defendants were further negligent in their retention, supervision and/or direction of LOWELL, in that he molested the plaintiff on the premises. The defendants failed to take reasonable steps to prevent such events from occurring on their premises.

46. LOWELL would not and could not have been in a position to sexually abuse the plaintiff had he not been negligently retained, supervised and/or directed by the defendant as Troop Leader, mentor and counselor to the boys, including the plaintiff.

47. The plaintiff suffered injury as a result of LOWELL's sexual molestation, including psychological and emotional injury as described above.

48. By reason of the foregoing, the defendants are liable to the plaintiff for their negligent retention, supervision and/or direction of LOWELL in an amount which exceeds the jurisdictional limits of all lower Courts which may have jurisdiction of this matter.

**FIFTH CAUSE OF ACTION: INTENTIONAL INFLICTION
OF EMOTIONAL DISTRESS**

49. Plaintiff repeats and realleges by reference all preceding paragraphs of this Complaint into this paragraph.

50. The sexual molestation of the plaintiff when he was a minor was extreme and outrageous conduct, beyond all possible bounds of decency, atrocious and intolerable in a civilized community.

51. The defendants knew or intentionally disregarded the substantial probability that LOWELL's conduct would cause severe emotional distress to the plaintiff.

52. The plaintiff suffered severe emotional distress including psychological and emotional injury as described above. This distress was caused by LOWELL's sexual abuse of the plaintiff.

53. At the time LOWELL molested the plaintiff, which he knew would cause, or intentionally disregarded the substantial probability that it would cause, severe emotional distress, LOWELL was employed as the plaintiff's Troop Leader, mentor and counselor by the of the defendants. It was part of LOWELL's job as a role model and Troop Leader to gain the plaintiff's trust. LOWELL used his position of authority and the representations made by the defendants about his character that accompanied that position, to gain the plaintiff's trust and confidence, and to create opportunities to be alone with and molest the plaintiff.

54. The defendants are liable for LOWELL's conduct under the doctrine of *respondeat superior*.

55. By reason of the foregoing, the defendants are liable to the plaintiff for intentional infliction of emotional distress in an amount which exceeds the jurisdictional limits of all lower Courts which may have jurisdiction of this matter.

**SIXTH CAUSE OF ACTION: NEGLIGENT INFLECTION
OF EMOTIONAL DISTRESS**

56. Plaintiff repeats and realleges by reference all preceding paragraphs of this Complaint into this paragraph.

57. The defendants owed a duty to the plaintiff because he was a minor entrusted to their care, and because the defendants, through their hiring and/or appointment, and their retention of LOWELL, represented that he was a role model for minor boys and an individual to whom minor boys could be safely entrusted.

58. The defendants breached their duty to the plaintiff by negligently hiring, appointing, retaining, supervising and/or directing LOWELL, and in failing to protect the plaintiff

from a sexual predator.

59. The plaintiff suffered severe emotional distress including psychological and emotional injury as described above. This distress was a direct result of the defendants' breach of their duty.

60. In addition to their own direct liability for negligently inflicting emotional distress on the plaintiff, the defendants are also liable for LOWELL's negligent infliction of emotional distress under the doctrine of *respondeat superior*. At the time LOWELL breached his duty to the plaintiff, he was employed as the plaintiff's Troop Leader, mentor and counselor by the defendants. It was part of LOWELL's job as role model and Troop Leader to gain authority over the plaintiff and gain the plaintiff's trust. LOWELL used his position of authority and the representations made by the defendants about his character that accompanied that position, to gain the plaintiff's trust and confidence and to create opportunities to be alone with and sexually abuse the plaintiff.

61. By reason of the foregoing, the defendants are liable to the plaintiff for negligent infliction of emotional distress in an amount which exceeds the jurisdictional limits of all lower Courts which may have jurisdiction of this matter.

JURY DEMAND

62. Plaintiff demands a trial by jury of all issues triable by jury in this action.

WHEREFORE, plaintiff prays for judgment as follows:

A. Awarding compensatory damages in an amount sufficient to compensate plaintiff for his injuries;

B. Awarding plaintiff costs, disbursements and attorneys fees to the extent available by law; and

C. Awarding such other and further relief as this Court may deem just and proper.

Dated: New York, New York
October 29, 2019

By: 
OKUN, ODDO & BARAT, P.C.
David M. Oddo, Esq.
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

JOHN McCARTHY,

Plaintiff,

- against -

BOY SCOUTS OF AMERICA, GREATER NEW
YORK COUNCILS, BROOKLYN COUNCIL
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Defendants.

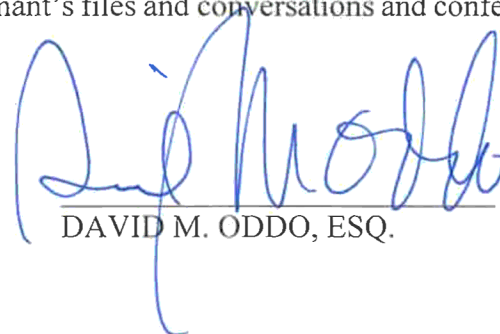
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VERIFICATIONSTATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

The undersigned, an attorney admitted to practice in the Courts of the State of New York, hereby affirms under the penalties of perjury as follows:

That affirmant is the attorney for the plaintiff in the within action; that affirmant has read the foregoing COMPLAINT and knows the contents thereof; that the same is true to affirmant's knowledge, except the matters stated to be alleged on information and belief, and that those matters affirmant believes to be true. The reason this verification is made by affirmant and not by the plaintiff is that the plaintiff does not reside in the County in which affirmant maintains an office. The grounds of belief as to all matters not stated upon affirmant's knowledge are documents, correspondence and records maintained in affirmant's files and conversations and conferences had with the plaintiff.

Dated: New York, New York
October 29, 2019



DAVID M. ODDO, ESQ.

Index No:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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and JOHN B. LOWELL,

Defendants.

SUMMONS and VERIFIED COMPLAINT

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